

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion requested by:)	No. 76-001
W. Dean Cannon, Jr.,)	August 3, 1976
Californians for Fiscal)	
Responsibility)	

BY THE COMMISSION: Californians for Fiscal Responsibility (hereinafter CFR), which previously was known as the Committee for the Support of ACA 31, provided its member savings and loan associations with mailing inserts which were included in customer mailings and with counter displays which advocated passage of Proposition 8. W. Dean Cannon, Treasurer of the Committee, has asked the Commission the following questions:

(1) Are payments made by a member association in connection with mailing the inserts includable for the purpose of determining whether the member association is a "committee" within the meaning of Government Code Section 82013?

(2) Are payments made by a member association in connection with displaying counter signs includable for the purpose of determining whether the member association is a "committee" within the meaning of Government Code Section 82013?

(3) Are payments made by a member association for the purpose of mailing the inserts and displaying the counter signs in-kind contributions to CFR?

CONCLUSION

(1) Certain payments made in connection with mailing the inserts are expenditures and, therefore, are includable for the purpose of determining whether a member association is a "committee" within the meaning of Government Code Section 82013.

(2) Certain payments made in connection with displaying counter signs are expenditures and, therefore, are includable for the purpose of determining whether a member association is a "committee" within the meaning of Government Code Section 82013.

(3) Certain payments made in connection with mailing the inserts and displaying the counter signs are in-kind contributions by the member associations to the CFR. Government Code Section 82015.

ANALYSIS

(1) The first question before us is whether certain payments made by a member savings and loan association, in connection with mailing to its customers political advertisements provided by CFR, are expenditures for the purpose of determining whether the member association is a "committee" within the meaning of Government Code Section 82013.¹ We conclude that they are.

Section 82013 provides, in pertinent part:

"Committee" means any person or combination of persons who directly or indirectly receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, ...
if: ...

(b) Expenditures and contributions made, other than contributions described in subsection (c), total five hundred dollars (\$500) or more in a calendar year; ...

Section 82025, as amplified by 2 Cal. Adm. Code Section 18225, provides that any monetary or nonmonetary payment is an expenditure if it is made by a candidate, controlled committee, committee of a political party, or committee organized primarily for political purposes. 2 Cal. Adm.

¹/ All statutory references are to the Government Code unless otherwise noted.

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Code Section 18225(b). With respect to all other persons, a monetary or nonmonetary payment is an expenditure if it is used to expressly advocate the nomination, election or defeat of a clearly identified candidate, or the qualification, passage or defeat of a clearly identified measure. 2 Cal. Adm. Code Section 18225(c).

In the instant case, the member savings and loan associations are not candidates, controlled committees, committees of a political party, or groups formed or existing primarily for political purposes. However, the mailing inserts expressly advocate the passage of Proposition 8 and payments made in connection with mailing them, therefore, are expenditures, unless such payments are specifically excluded by other provisions of the Political Reform Act or by regulations interpreting those provisions.

With these general principles as a framework, we turn to a consideration of the specific types of payments - employee compensation, overhead, and postage costs - involved here. First, with respect to compensation paid to an employee who assists in the mailing of the inserts, such payments will be an expenditure if the employee spends 10 percent or more of his compensated time in a calendar month performing services for a political purpose at the request of his employer. 2 Cal. Adm. Code Section 18423(a). Subsection (b) of 2 Cal. Adm. Code Section 18423 expressly provides that "hours spent developing or distributing communications that expressly advocate the ... passage or defeat of a clearly identified measure" are services provided for a political purpose. Accordingly, if an employee of a member association spends 10 percent or more of his compensated time in a calendar month working on the distribution of the mailing inserts, the pro rata portion of that employee's compensation attributable to the performance of such services is an expenditure which must be counted for the purpose of determining whether the member association is a committee. However, none of an employee's compensation is an expenditure if that employee spends less than 10 percent of his compensated time in a calendar month performing political services for his employer.

With respect to payments for overhead, 2 Cal. Adm. Code Section 18225(c)(3)(A) provides that expenditures include any "additional administrative or overhead costs attributable to the communication," but "any of the regular on-going business overhead which will be incurred in similar amounts regardless of the communication" is expressly excluded. Thus, payments for rent, electricity, water, telephones, and similar operating costs are not reportable expenditures so long as no additional payments for these costs are incurred as a result of mailing the inserts.

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Finally, 2 Cal. Adm. Code Section 18225(c)(3)(A) specifically requires reporting of "all costs directly attributable to the communication, including ... postage" Thus, postage costs attributable to the political communications involved here are expenditures, regardless of the fact that the mailing inserts will be included in a regular mailing of the member associations.

Postage costs, unlike other ongoing expenses related to going business, are directly tied to the distribution of the communication which expressly advocates a position on the ballot measure. Moreover, postage costs are discrete and, in contrast to normal overhead expenditures, it is easy to ascertain the amount attributable to the communication. In addition, to exclude postage costs as an expenditure when a company includes a political communication in one of its regular mailings would create an anomaly with respect to reportable expenditures as between companies which have regular mailings and those that do not. Accordingly, 2 Cal. Adm. Code Section 18225(c)(3)(A) includes postage costs and does not distinguish between those situations where the political communication is included in a regular mailing and those where it is not.

In the present case, where both political and nonpolitical material will be included in the mailing, each member association must allocate a reasonable portion of the postage and envelope costs to the political communication for the purpose of determining the amount of the expenditure involved. Other than the requirement that any such allocation be reasonable and be made in good faith, there are no precise rules for determining exactly how the allocation should be accomplished. Generally, however, it will be acceptable to allocate on the basis of the comparative number of items or pages, or the comparative amount of weight, between the political and the nonpolitical materials.

Thus, to summarize, the expenditures related to the mailing inserts which must be considered expenditures for the purpose of determining whether a member association is a committee include: the pro rata portion of salaries paid to employees who spend 10 percent or more of their compensated time during a calendar month distributing the mailing; additional overhead costs incurred because of the mailing; and the pro rata portion of postage and envelope costs attributable to the mailing. If these "expenditures," alone or in combination with other "expenditures" or in-kind contributions of a member association, total \$500 or more in a calendar year, the association is a committee and, consequently, is required to file campaign statements pursuant to Sections 84200, et seq.

we also observe that regardless of whether the member association is a committee, the provision of Section 84305 which requires that "a copy of every mass mailing in support of or in opposition to a ... state measure shall be sent to the Commission on the same day on which it is mailed to the public generally" must be followed. "Mass mailing" is defined in Section 82041.5^{2/} and 2 Cal. Adm. Code Section 18241^{3/} as 200 or more identical or nearly identical pieces of mail sent in a calendar month. Accordingly, if 200 or more of these mailing inserts are sent by a member association in a calendar month, this provision of Section 84305 is applicable.^{4/} In addition, if a member association is a committee and the inserts are a mass mailing, such inserts must be sent by bulk rate or postage meter, or the name and street address of the sender must appear on the outside of the envelope and on the inserts themselves.

(2) The second question we have been asked is whether costs incurred in connection with displaying counter signs advocating the passage of Proposition 8 are "expenditures" which must be included for the purpose of determining whether a member association is a committee pursuant to Section 82013. Since the counter signs were provided by CFR, the member associations did not incur any costs in connection with the construction or development of the signs. With respect to whether employee salaries or overhead costs incurred in connection with setting up and maintaining the counter displays are expenditures, the standards set forth in part 1 of this opinion are applicable.

2/ Section 82041.5 states:

"Mass mailing" means two hundred or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry.

3/ 2 Cal. Adm Code Section 18241 states:

For the purposes of Government Code Section 82041.5, a "mass mailing" has been made when 200 or more identical, or nearly identical, pieces of mail have been sent within a calendar month.

4/ Since all of the mailing inserts sent by the various member associations will be identical, it will suffice for purposes of compliance with Section 84305 if the CFR forwards one copy of the mailing insert to the Commission.

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(3) The final question before the Commission is whether payments made by a member association in connection with mailing the inserts or displaying the counter signs are in-kind contributions by the member associations to CFR.

Section 82015, as interpreted by 2 Cal. Adm. Code Section 18215, provides that a contribution includes any monetary or nonmonetary payment, not supported by full and adequate consideration, which is received by or made at the behest of a candidate, a controlled committee, an official committee of a political party, or an organization formed or existing primarily for political purposes. "Made at the behest of" means a payment "made under the control or at the direction of a candidate, controlled committee, official committee of a political party, or organization formed or existing primarily for political purposes." 2 Cal. Adm. Code Section 18215(c).

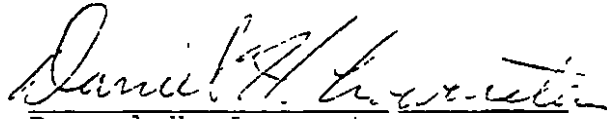
In the instant case, CFR was formed primarily for the political purpose of influencing the voters to adopt Proposition 8. Moreover, CFR controlled and directed payments by its member associations in two respects. First, CFR designed and printed the mailing inserts and counter displays and thus controlled the content of the communications. Second, it coordinated the activities of its member associations relative to the mailings and displays. We conclude, therefore, that to the extent payments by member associations in connection with distributing the inserts or displaying the counter signs are "contributions," they are in-kind contributions to CFR.

An employee's salary is a contribution only if the employee "spends more than 10 percent of his compensated time in any one month rendering services for political purposes." 2 Cal. Adm. Code Section 18423(a). Accordingly, employee compensation will be an in-kind contribution in the present case only if the time threshold is surpassed in connection with mailing the inserts and displaying the counter signs. Moreover, since payments for regular business overhead are not reportable expenditures by a member association for the purposes of determining whether the association is a committee, we conclude that such payments also are not reportable as an in-kind contribution by the recipient CFR. Although there is no express exclusion for regular ongoing business overhead from what constitutes an in-kind contribution, no legitimate purpose would be served by deeming such expenses a contribution but not an expenditure. To the contrary, to do so would create unnecessary accounting burdens for the member associations and would ignore the reasoning which resulted in excluding such costs from reportable expenditures. Finally, with respect to postage and envelope

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costs, these will be in-kind contributions to CFR, and the amount of such contributions will be equal to the amount of the postage costs which is an expenditure. In conclusion, therefore, a member association's in-kind contribution to CFR will be identical to its expenditures in connection with distributing the inserts and displaying the counter signs.

Adopted by the Commission August 3, 1976. Concurring: Blonsahan, Lapan, Lowenstein and Quinn. Commissioner Carpenter dissented.


Daniel H. Lowenstein
Chairman